

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5960 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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LALSHANKER A SUTHAR

Versus

GUJ AGRICULTURAL UNIVERSITY

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Appearance:

MR SR SHAH for Petitioner  
MR JR NANAVATI for Respondent No. 1  
MR MUKESH A PATEL for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/1999

ORAL JUDGEMENT

1. The petitioner, an Ex-employee of the State of Gujarat and now the employee of the Gujarat Agricultural University, Banaskantha, by this petition under Article 226 of the Constitution is praying for direction to the respondents No.1 and 2 to fix his pay in the revised pay scale of Rs.425-700 and to give him all the consequential benefits flowing therefrom.

2. The facts of the case, in brief, are that the petitioner was appointed as Laboratory Technician on 1-9-1967 in the Agriculture and Cooperative Department to work under the Directorate of Animal Husbandry. At the relevant time, the Gujarat College of Veterinary Science and Animal Husbandry was run by the Government of Gujarat. The petitioner was appointed in the scale of Rs.185-15-230-15-270. Along with the petitioner, four other persons were also similarly appointed as Laboratory Technicians. The four other persons were Science graduates. However, the petitioner was a Inter-science with one necessary Diploma course. Under the recommendations of Sarela Pay Commission which were made effective from 1-8-1970 the pay scale of the petitioner of Rs.185-270 was revised to Rs.200-430. The pay of all the five persons including the petitioner was fixed in the revised pay scale of Rs.200-430 w.e.f. 1-8-1970. The Gujarat Agricultural University Act, 1969 was enacted under which the Gujarat Agricultural University was constituted as a Corporate body. The Gujarat College of Veterinary Science and Animal Husbandry was transferred to the Gujarat Agricultural University on its formation. By virtue of the provisions as contained in section 51 of the Gujarat Agricultural University Act, 1969, the existing staff of the Gujarat College of Veterinary Science and Animal Husbandry which includes the petitioner and four other persons who were appointed along with him stood statutorily transferred to the University. The petitioner and four other persons became the employee of the University. The Sarela Pay Commission has not drawn any distinction whatsoever for fixing of the pay scale of Laboratory Technicians in the Animal Husbandry Department on the basis of qualifications. So all the five persons were given the same pay scale irrespective of the fact that they were having different qualifications. The services of the petitioner and four other were transferred to the University w.e.f. 15-5-1972. The Desai Pay Commission was there and on the recommendations of the said Commission, the pay scales of the Government employees were revised and accordingly the pay scale of the Laboratory Technicians in the Animal Husbandry Department came to be revised from Rs.200-430 to Rs.425-700. This recommendation was given effect to from 1-1-1973. The respondent No.1 under its office order dated 18-1-1977 instead of extending the benefits of the revised pay scale of Rs.425-700 to the petitioner has fixed the pay scale of the petitioner at Rs.380-600 whereas the four other persons who were appointed along with the petitioner and were at par with him in all respects were given the pay scale of Rs.425-700. Hence, this special

civil application before this court.

3. The respondent-University filed reply to the special civil application and contested the same. The State of Gujarat has not chosen to file reply to the special civil application.

4. Learned counsel for the petitioner contended that the action of the respondent- University to prescribe two different pay scales of the Government employees whose services stood transferred to the University on taking over of the Gujarat College of Veterinary Science and Animal Husbandry by the University on the basis of qualifications is highly arbitrary and unjustified. It has further been contended that the University while passing the order dated 18-1-1977 has altogether ignored the provisions as contained in section 52 of the Gujarat Agricultural University Act. In his submission the service conditions, i.e. the pay, leave, retirement, allowances, pension, provident fund etc. of the members of the staff who were Government servants and whose services were transferred under section 52 shall be regulated by the Bombay Civil Services Rules, 1959 or any other rules as may from time to time be made by the State Government. So their service conditions aforesaid are protected and whatever pay scales which have been prescribed by the Government from time to time for the post of Laboratory Technician are to be given to the petitioner. The Government has not prescribed two different pay scales for Laboratory Technicians on the basis of qualifications and as such the action of the respondent University to give lower pay scale to the petitioner is highly arbitrary and unjustified. It has next been contended that though the Gujarat Agricultural Employees (Revision of Pay ) Rules, 1976 prescribes different pay scales but under that rules also, it is specifically provided that save as otherwise provided by or under these rules, these rules shall apply to nonteaching staff to whom the University is competent to appoint. Thus it is applicable to those employees to whom the University is competent to appoint. It is a case where the petitioner's service conditions are to be regulated by virtue of proviso to section 52 of the Gujarat Agricultural University Act by the revised pay scale as prescribed from time to time by the Government and not by the revised pay scale rules of the University. Lastly, it is contended that before giving this lower pay scale to the petitioner even the respondent -University has not cared to take the prior approval of the State of Gujarat. For all the purposes the petitioner and four other persons constitute one class and when those four

persons were given the higher pay scale though may be on the ground of their possessing the higher qualification it is a case where it is not permissible to the University to give lower pay scale to the petitioner.

5. The counsel for the respondent- State of Gujarat is in fact not opposing in substance the claim of the petitioner.

6. Shri J.R. Nanavati, learned counsel for the University contended that on the basis of the qualifications, it is permissible to the employer to prescribe two different pay scales even for the post of one category. In the case in hand, for Laboratory Technician, the University has prescribed a higher pay scale for the persons who were possessing the higher qualifications and to which the petitioner can not have any exception. The petitioner was not having the requisite qualification and as such he has to be satisfied by the pay scale prescribed by the University. In support of his contention, the counsel for the respondent- University placed reliance on the decision of the Hon'ble Supreme Court in the case of Shyambabu Verma vs. Union of India reported in 1994 (2) SCC 521. It has next been contended that whatever the existing conditions which the petitioner was enjoying on the date of transfer of his services to the University from the Government department are only to be protected under section 52 of the University Act. Subsequently, the petitioner has become the employee of the University and it has all the right to change the service conditions. The pay scale as prescribed by the University for its employees are equally applicable to the petitioner to which no exception can be made. Otherwise also, in case, it is permitted then there will be two pay scales for the persons of the different qualifications and it will result in discrimination and frustration amongst the other employees of the University. Lastly, it is contended that as the petitioner has become the employee of the University, the University was not under an obligation to take any prior permission of the State Government to prescribe the lower pay scale on the basis of qualifications for the petitioner.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. It is not in dispute that the petitioner is the only person of this category who has been deprived of the pay scale of Rs.425-700 only on the ground that he is not possessing the higher qualifications.

9. It is also not in dispute between the learned counsel for the parties that in the State Government under the Revised pay scale rules which have been brought into force from time to time on the recommendations of the different Pay Commissions for the post of Laboratory Technician in the Animal Husbandry Department two different pay scales on the basis of qualifications have not been prescribed. Under these rules, only unified pay scale has been prescribed for the Laboratory Technicians in the department. I have perused the Gujarat Civil Services (Revision of Pay) Rules, 1987 and therefrom also I find that even in these rules which have been given effect to from 1-1-1986 for the post of Laboratory Technicians the pay scale has been proscribed of Rs.1400-2300. From these rules, I further find that earlier the pay scale for this post was Rs.425-700 on which also there is no any dispute. Relevant entry from these rules is as under:

22. Laboratory 425-700 1400-2300  
Technician

10. The University is competent to prescribe the pay scale for its non-teaching staff for whom it has the power of appointment. Even if the employees who come in the services of the University on transfer from the Government services there it can prescribe two pay scales on the basis of qualifications but the pay scale which is prescribed for the post which they were holding in the State Government can not be reduced. In the State Government for the post of the petitioner i.e. Laboratory Technician, the pay scale has been prescribed of Rs.425-700 (unrevised) equivalent to Rs.1400-2300 from 1-1-1986 has to be given to the petitioner. It is understandable that on the basis of qualifications, the two pay scales i.e. one Rs.425-700, (Rs.1400-2300 revised w.e.f. 1-1-1986) and another higher than that should have been prescribed and those persons possessing higher qualifications could have been given the benefit of higher pay scale but it could not have been done nor it is permissible to give this pay scale to the persons not having higher qualifications. At the cost of repetition, it is to be stated that in the Government no two pay scale have been prescribed for the post of Laboratory technicians and so long as it is not done, the pay scale which has been prescribed by the State Government has to be adhered to by the University.

11. I find sufficient merits in the contention of the learned counsel for the petitioner that the service conditions which includes pay scale etc. are clearly

protected under section 52 of the Gujarat Agricultural University Act. Section 52 of the Act reads as under:

52 (1) Notwithstanding anything contained in section 51, such of the existing staff serving in any of the colleges or institution transferred or liable to be transferred to the University under section 51 or such other staff connected therewith as the State Government may, from time to time, having regard to the necessity therefor, direct shall be taken over employed by the University and every persons so taken over and employed, shall be subject to provision of this Act and Statute and Regulations made thereunder.

Provided that :

(a) During the period of such employment, all matters relating to pay, leave, retirement, allowances, pensions, Provident fund and other conditions of service of the members of such staff shall be regulated by the Bombay Civil Services Rules, 1959 or such other Rules as may, from time to time, be made by the State Government.

(b) xxxxxxxx xxxxxxxxxxxxxx xxxxxxxx

12. Proviso to this section leaves no power with the University to change the service conditions of the petitioner. This proviso is very specific, clear, unambiguous and it nowhere permits the University to prescribe the pay scale of the petitioner lower than that which is the pay scale of this post in the State Government. The provisions of Gujarat Agricultural Employees (Revision of Pay) Rules, 1976 also supports the contention of the petitioner. There can not be any quarrel with the principle as laid down by their Lordships of the Hon'ble Supreme Court that on the basis of the qualifications, two different pay scales can be provided for the same post but that principle will not apply in this case i.e. in the case of the petitioner because his service conditions are protected under section 52 of the Gujarat Agricultural University Act. However, the University can provide higher pay scale than what it is prescribed by the Government for this post and the person who is possessing higher qualification should be given the higher pay scale which the petitioner may not be entitled but his payscale for which as per the Government pay scale rules is entitled can not be revised.

13. As a result of the aforesaid discussion, this

writ petition deserves to be allowed and accordingly the same is allowed. Annexure 'H' dated 1/2-7-1986 is quashed and set aside and it is hereby declared that the petitioner is entitled for the pay scale of the post of Laboratory Technician in the Animal Husbandry Department prescribed by the State Government. He shall be entitled for the benefit of revision of the pay scale corresponding to that pay from the dates from which the revisions were made effective. The petitioner shall be entitled for all the consequential benefits flowing from this declaration. The respondents are directed to pay Rs.2000/- as costs of this petition to the petitioner. Rule is made absolute accordingly.

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